GAN HONG HOE v. AZIZ BEG

[O. C. J. (Abbott J.) May 24, 1954]

[Seremban — Civil Suit No. 33 of 1952]

Executor and Administrator — Contract by administrator to obtain permission of Court to sell — Breach of contract — Damages — Counterclaim.

The defendant in this case held the Letters of Administration in respect of his deceased mother's estate. In February 1950 the defendant by a written agreement entered with the plaintiff agreed to sell part of the deceased's estate, to wit, a certain house and land, to the plaintiff for the sum of $17,000 and the plaintiff paid $5,000 by way of deposit. In the agreement the defendant undertook without delay to seek the permission of the Court to sell the house and land and he further undertook to take all the necessary steps to give valid title to the plaintiff; the plaintiff undertook to pay the balance of the purchase price within two weeks of obtaining the Court's permission to sell. In the event of the defendant's refusal to effect the transfer within two weeks of receiving Court permission, he undertook to refund to the plaintiff the amount of the deposit ($5,000) and in addition, to pay to the plaintiff $5,000 by way of damages. The plaintiff, with full consent of the defendant, had been in occupation of the premises since the date of the agreement. The defendant never applied for permission of the Court to sell and he had taken no steps whatsoever to carry out his part of the agreement. The plaintiff asked the Court for an order for specific performance and such other further relief as might be just. The defendant, by having denied the validity of the agreement, asked for damages, presumably in trespass, at the rate of $250 a month for the period in which the plaintiff and his tenant occupied the premises.

Held: (1) the estate was bound by the agreement; (2) the agreement was not an agreement to sell, but merely an agreement to obtain the permission of the Court to sell after such permission had been granted; (3) the only proper relief the Court could give to the plaintiff was to make an order for damages for breach of contract on the part of the defendant: $5,000 to be paid out of the estate and $5,000 to be paid by the defendant personally; (4) the defendant was not entitled to any relief on his counter-claim.

Case referred to:—

(1) *In re Watson, ex parte Phillips* 18 Q.B.D. 116 & 19 Q.B.D. 234.

ACTION for Specific Performance.

R. H. V. Rintoul for the plaintiff.

N. A. Marjoribanks for the defendant.

Cur. Adv. Vult.

Abbott J.: — On the 28th of October, 1948, a lady named Kami Begum binti Abdul Hamid Beg died intestate; one of her sons, the defendant, was granted Letters of Administration in respect of her estate. During her lifetime the deceased lady possessed a certain house and land in Jalan Tunku Hassan, Seremban. This house and land formed part of her estate. On the 4th of February, 1950, the defendant agreed to sell the house and land to the plaintiff for the sum of $17,000 and the plaintiff paid $5,000 by way of deposit. A written agreement (Exhibit A) was entered into between the plaintiff and the defendant, wherein (paragraph 3) the defendant undertook without delay to seek the permission of the Court to sell the house and land and the defendant undertook (paragraph 7) to take all the necessary steps to give valid title to the plaintiff; the plaintiff undertook to pay the balance of the purchase price within two weeks of obtaining the Court's permission to sell. In paragraph 6 of the agreement the defendant undertook, in the event of his refusal to effect the transfer within two weeks of receiving permission of the Court to sell, to refund to the plaintiff the amount of deposit ($5,000) and, in addition, to pay to the plaintiff $5,000 by way of damages. The defendant never applied for permission of the Court to sell and he has taken no steps whatsoever to carry out his part of the agreement. The plaintiff, with full consent of the defendant, has been in occupation of the premises from the 4th of February, 1950. The plaintiff asks this Court for an order for specific performance and such other further relief as may be just. The defendant, by having denied the validity of the agreement, asks for damages, presumably in trespass, at the rate of $250 a month for the period in which the plaintiff and his tenant occupied the premises.

I will say at once that the defendant has acted throughout in a most disgraceful way. There are no merits whatsoever in his case and it remains to be seen whether the law requires that he succeed in his counterclaim. It is perfectly clear that, two years after he had entered into this agreement, he received a better offer and he deliberately accepted it and kept the plaintiff in the dark concerning this better offer. Further, he deliberately lied by saying that an application for leave to sell had actually been filed in the Court. Such is the defendant.

Seven issues were agreed to between learned Counsel.

Before proceeding to the issues there is one point which I think should be cleared up. It might be suggested that paragraph 6 of the agreement gives an option to the defendant to refuse transfer of the land and house on the refund of the deposit of $5,000 and on the payment of $5,000 by way of damages. By the wording of the paragraph itself it is quite clear that such an option would not be available to the defendant until after he had obtained the permission of the Court to sell. Paragraph 6, therefore, is of no avail to him.

As regards issue 1, "Did the defendant ratify the agreement after extracting Letters of Administration?". I am perfectly satisfied that he did and this satisfaction is derived from the evidence of Mr. Hall who was then acting as plaintiff's lawyer. Mr. Hall told the Court

that on 19th of July 1952 — three days after Letters of Administration had been extracted — the defendant informed him that he was proceeding with an application to seek the permission of the Court to sell the house and land.

As regards issue 2, "Is the agreement binding on the estate of the deceased?". In the case of *In re Watson, ex parte Phillips*[1] it was held that where, during the time when there is no personal representative of the estate of a deceased person, services have been rendered which not only were for the benefit of the estate, but also were rendered under a contract with someone who subsequently by becoming administrator became authorised to bind the estate, and who ratified the contract, the estate of the deceased is liable for such services. In this case it cannot now be determined whether the proposed sale would be for the benefit of the estate. That would be, or have been, for the Court to say upon granting or refusing the application for leave to sell. There is a distinction between this case and the case cited; but nevertheless, I consider that the principle laid down in that case may properly be applied here. In the view of this Court the estate is bound by the agreement.

As regards issues 3 and 4, "Did the defendant receive a better offer and, if so, did that exempt him from making an application to the Court, pursuant to paragraph 3 of the agreement?". I am satisfied that he did receive a better offer and that it did not exempt him from fulfilling clause 3 of the agreement. It would be a novel proposition which would allow an administrator or a trustee to enter into an agreement and then to break it with impunity on the score that, by doing so, he could derive greater advantage for the estate or the *cestui qui trust*.

As regards issue 5, "Does section 20(e) of the Specific Relief (Malay States) Ordinance 1950 prevent an order for specific performance in this case?". I am quite satisfied that the agreement was neither in breach of trust nor in excess of trust on the part of the defendant. The agreement was not an agreement to sell in the first place but merely an agreement to obtain the permission of the Court to sell, and only to sell after such permission had been granted. It cannot be either in breach of trust or in excessive power to seek the permission of the Court.

I will deal with issues 6 and 7 in the following paragraphs of this judgment.

It is clear that no useful purpose would be served, so far as the plaintiff is concerned, by giving an order for the specific performance of the agreement. To do so would merely mean that the defendant would be bound to apply to the Court for permission to sell. I do not find myself able, in law, to jump, as it were, the condition precedent for the seeking of an order to sell and proceed to order for the specific performance of the sale. I cannot say whether the Court would grant permission or not and if it were to refuse permission the plaintiff would have achieved nothing upon his claim. It seems to me, therefore, that the only proper relief that I could give to the plaintiff is to make an order for damages for breach of contract on the part of the defendant. At paragraph 3 of the agreement the defendant undertook to take all steps necessary, without delay, in order to get the permission of the Court to sell the land. It is not necessary for me to say more than that the delay is unconscionable. Taking into account the fact that the plaintiff has paid $5,000 deposit I award him $10,000 damages for breach of agreement but I make no order as regards specific performance. I order that these damages be paid as follows — $5,000 to be paid out of the estate (as being the amount paid by way of deposit) and $5,000 to be paid by the defendant personally and not out of the estate. I am unable to see that the defendant is entitled to any relief on his counter-claim. He put the plaintiff in occupation of the premises. The payment of rent was not in the contemplation of the agreement; the plaintiff was never a trespasser, nor was he at any time the agent of the defendant or of the estate. If I were to order the payment of any damages (by way of rent or otherwise) by the plaintiff it would be tantamount to condoning the defendant's breach of agreement. If the value of the estate is lessened by reason of this judgment it is because the defendant is a bad administrator and the beneficiaries will be wise to have him removed and to supplant him by somebody who will be able to safe-guard their interests better. I order that the defendant pay the costs of this case personally.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Lovelace & Hastings.*

W. H. L. SCOTT v. REGINA

[A. Cr. J. (Whitton J.) August 27, 1954]

[Singapore — Magistrate's Appeal No. 99 of 1954]

Road Traffic Ordinance, 1941, s. 48(1) — Using and permitting vehicle to be used on road without policy of insurance being in force — Third party risk — Unlicensed person in driver's seat holding steering-wheel while holder of licence sat beside and had a hand on the steering-wheel — User uncovered by insurance.